

### **REMARKS**

The Office Action mailed September 17, 2008 has been received and reviewed. Each of claims 1-3, 5-15, and 18-31 stands rejected. Claims 1, 2, 7, 13, 18, and 23 have been amended herein. Claim 32 has been added as a new claim. Care has been exercised to introduce no new subject matter. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

#### **Rejections based on 35 U.S.C. § 103**

Claims 1-3, 5, 6-15 and 18-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ermel et al. (U.S. Patent No. 5,835,094, hereinafter “Ermel”) in view of Edelman (U.S. Patent No. 5,680,563, hereinafter “Edelman”) and Mander et al. (U.S. Patent No. 6,243,724, hereinafter “Mander”) further in view of Rosenzweig (U.S. Patent No. 6,950,989, hereinafter “Rosenzweig”).

##### **A.) Applicable Authority**

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “ the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966). To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some clear and explicit articulation as to why the invention would have been obvious to one of ordinary skill in the art. Mere

conclusory statements will not sustain an obviousness rejection. *KSR v. Teleflex*, 127 S. Ct. 1727 (2007). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974). Further, if an independent claim is nonobvious, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

B) Independent Claims 1, 13, and 23, as Amended herein, Contain Elements not Taught or Suggested by the Cited References

1) Claims 1-3, 5, 7-12, and 29

Claim 1, as amended herein, recites a method for representing files. Claim 1 includes receiving an identification of a plurality of files to be represented by a plurality of stack icons and determining a stack size for each of the plurality of stack icons. Claim 1 also includes dividing the plurality of stack icons based on size into equal fractions, wherein the equal fractions comprise an equal number of stack icons and wherein the equal fractions comprise a largest stack size fraction comprising largest stack sizes, one or more medium stack size fractions comprising medium stack sizes, and a smallest stack size fraction comprising smallest stack sizes. Moreover, claim 1 includes assigning each of the stack icons in the largest stack size fraction a predefined largest stack icon; assigning each of the stack icons in the smallest stack size fraction a predefined smallest stack icon; and assigning each of the one or more medium stack size fractions a predefined medium stack icon. Pursuant to claim 1, if stack icons have been divided into more than one medium stack size fraction, each medium stack size fraction of the plurality of medium stack size fractions is assigned a predefined medium stack icon, which differs in size from all other predefined icons and is proportional to the medium stack size fraction's relative position in the range. Each stack icon's assigned predefined stack icon is

displayed as a representation of the stack icon. Support for amendments to claim 1 can be found in at least ¶ [0066] of the *Specification*.

Claim 1 requires a series of steps that include dividing stack icons based on size into equal fractions; assigning each stack icon within each equal fraction a predefined stack icon; and displaying predefined stack icons as representations. For example, if a plurality of files were selected to be represented by 40 different stack icons, the stack icons might be divided into groups of 10 based on size of each stack, i.e., the 10 smallest stacks would be grouped together, the 10 second smallest stacks (first of two medium stacks) would be grouped together, the 10 second largest stacks (second of two medium stacks) would be grouped together, and the 10 largest stacks would be grouped together. Then the 10 largest stacks would each be assigned the same predefined largest stack icon and the 10 smallest stacks would each be assigned the same predefined smallest stack icon. The 10 second smallest stacks would be assigned the same predefined second smallest stack icon and the 10 second largest stacks would each be assigned the same predefined second largest stack icon. Each stack icon's assigned predefined stack icon would be displayed as a representation.

None of the cited references include any teaching or suggestion relating to dividing a plurality of stacks into equal fractions based on size. Moreover, none of the cited references include any teaching or suggestion relating to assigning and displaying predefined stack icons. Accordingly, Applicants respectfully submit that the cited references fail to teach or suggest each and every element of claim 1, as amended herein, and that the rejection of claim 1 under 35 U.S.C. § 103 should be withdrawn. Applicants respectfully submit that claim 1 is believed to be in condition for allowance and such favorable action is respectfully requested.

If an independent claim is nonobvious, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071. Because claims 2-3, 5, 7-12, and 29 depend, either directly or indirectly, from independent claim 1, claims 2-3, 5, 7-12, and 29 are patentable over the cited references for the above-stated reasons.

Moreover, claims 2-3, 5, 7-12, and 29 recite further novel, non-obvious features not taught or suggested in the cited references in the context of independent claim 1. For example, claim 3 includes storing an empty stack icon and claim 7 includes retrieving the empty stack icon. None of the cited references include any teaching or suggestion relating to storing and retrieving an empty stack icon. In another example, claim 2 requires the equal fractions comprise equal thirds, which is neither taught nor suggested by any of the cited reference, alone or in combination. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claims 2-3, 5, 7-12, and 29. Claims 2-3, 5, 7-12, and 29 are believed to be in condition for allowance and such favorable action is respectfully requested.

2) Claims 13-15, 18-22, 30, and 32

Claim 13, as amended herein, recites a method for representing a plurality of files. The method of claim 13 includes receiving an identification of a plurality of files to be represented by a stack icon and determining a stack size for the plurality of files, wherein the stack size corresponds to the number of individual files in the plurality of files. Claim 13 also includes identifying a library with which said plurality of files are associated, said library comprising stored files of a common type, said type being one of word processing, image, address list contacts, and audio. Moreover, claim 13 requires selecting, for representation of the plurality of files, a predefined stack icon from a plurality of predefined stack icons associated with said library, wherein the plurality of predefined stack icons comprise: (1) a largest stack

icon for representing pluralities of files with a stack size either including or above a minimum number, wherein the minimum number is a floor figure for the largest stack icon; (2) a second smallest stack icon for representing pluralities of files with a stack size above two and either including or below a maximum number, wherein the maximum number is a ceiling figure for the second smallest stack icon; and (3) one or more medium stack icons for representing pluralities of files with a stack size both above the maximum number and below the minimum number. The selected predefined stack icon is displayed for representation of the plurality of files.

Claim 13 requires that predefined stack icons include a largest stack icon, a second smallest stack icon, and one or more medium stack icons. Each stack icon is assigned a range of files within a plurality. For example, the largest stack icon might be assigned a range of files either including or above 15; a medium stack icon might be assigned a range of files that are equal to or above 8, but below 15; and the second smallest stack icon might include a range of files equal to or below 7, but above 2. None of the cited references include any teaching or suggestion related to assigning stacks ranges, as required in claim 13. For example, in rejecting claim 13, the Final Office Action indicates that Rosenzweig teaches a similar aspect. *See Final Office Action* at pg. 6. Applicants respectfully submit that Rosenzweig fails to teach or suggest the elements required by claim 13. For example, while Rosenzweig does illustrate stacks having different sizes, Rosenzweig fails to teach or suggest that the size of the stack is based on a predefined range, wherein the predefined ranges include: a largest range including pluralities of files either equal to or more numerous than a largest range minimum; a medium range including pluralities of files either equal to or more numerous than a second largest range minimum, but below the largest range minimum; and a third largest range including pluralities below the second largest range minimum, but above two. Rosenzweig simply fails to include any

teaching as to how the size of the stack is determined or how the stack size corresponds to the number of files that form the plurality of files. Accordingly, Applicants respectfully submit that the cited references fail to teach or suggest each and every element of claim 13, as amended herein, and that the rejection of claim 13 under 35 U.S.C. § 103 should be withdrawn. Applicants respectfully submit that claim 13 is believed to be in condition for allowance and such favorable action is respectfully requested.

If an independent claim is nonobvious, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071. Because claims 14-15, 18-22, 30, and 32 depend, either directly or indirectly, from independent claim 13, claims 14-15, 18-22, 30, and 32 are patentable over the cited references for the above-stated reasons.

Moreover, claims 14-15, 18-22, 30, and 32 recite further novel, non-obvious features not taught or suggested in the cited references in the context of independent claim 13. For example, claim 32 requires that the predefined stack sizes include a smallest icon, a medium icon, and a largest icon, which have ranges as specified in claim 13. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claims 14-15, 18-22, 30, and 32. Claims 14-15, 18-22, 30, and 32 are believed to be in condition for allowance and such favorable action is respectfully requested.

3) Claims 23-28 and 31

Claim 23 discloses a system for representing a selected stack of files. The system includes one or more computer-readable media storing computer-executable instructions for determining a stack size of a selected plurality of files and a library to which the selected files belong and comparing the stack size to a plurality of stack size boundaries that divide a stack size range into three or more sub-ranges. Claim 23 also includes selecting a default stack icon

that has been assigned to a sub-range that includes the stack size. Claim 23 requires displaying the default stack icon with a common property overlay, wherein the common property overlay comprises an additional icon indicating a common property of all files in the plurality of files and wherein the common property overlay is displayed within the boundaries of the default stack icon. Support for amendments to claim 23 can be found in at least ¶¶ [0057]-[0058] of the *Specification*.

Claim 23 specifies that a common property overlay, such as the file-type overlay illustrated in FIG. 7 of the *Application*, indicates a common file type of all files within the stack. In another example, the common property overlay may indicate the date or month in which the stack was created. In addition, claim 23 requires that the overlay is displayed within the boundaries of the default stack icon. None of the cited references include any teaching or suggestion of a common property overlay, which indicates a common property of all files in the stack and which is displayed within the boundaries of the default stack icon.

The Final Office Action has indicated that Mander teaches an overlay icon indicating a common property of files represented by an underlying stack icon. *See Office Action* at pg. 11, 3<sup>rd</sup> ¶. However, Applicants respectfully submit that Mander fails to teach an overlay icon, which is displayed within the boundaries of the default stack icon, as stated in amended claim 23. As opposed to claim 23, Mander (figures 13b and 4e) shows a description of the stack that is displayed outside the boundaries of the stack icon. Mander (figures 12a and 12b) is only directed to illustrating how a document is added to a stack and fails to include any teaching or suggestion relating to an overlay indicating a common property of all files represented by the stack. The Final Office Action has also indicated that Ermel (“Doc2” in Figs. 5 and 6) teaches an overlay indicating a common property of files represented by an underlying stack icon. *See*

*id.* However, Applicants respectfully disagree as clearly “Doc2” describes only one of the individual document icons and not a common property of all files represented by an underlying stack.

If an independent claim is nonobvious, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071. Because claims 24-28 and 31 depend, either directly or indirectly, from independent claim 23, claims 24-28 and 31 are patentable over the cited references for the above-stated reasons. Moreover, claims 24-28 and 31 recite further novel, non-obvious features not taught or suggested in the cited references in the context of independent claim 23. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of claims 24-28 and 31. Claims 24-28 and 31 are believed to be in condition for allowance and such favorable action is respectfully requested.

**CONCLUSION**

For at least the reasons stated above, claims 1-3, 5-15, 18-31, and 32 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or [adobrien@shb.com](mailto:adobrien@shb.com) (such communication via email is herein expressly granted) – to resolve the same. A Request for Continued Examination is being filed with this Response, and the fee of \$810 is included with this filing. The Commissioner is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-2112.

Respectfully submitted,

/ANDREW D. O'BRIEN/

---

Andrew D. O'Brien  
Reg. No. 57,064

ADOZ/tq  
SHOOK, HARDY & BACON L.L.P.  
2555 Grand Blvd.  
Kansas City, MO 64108-2613  
816-474-6550